

LAW OFFICE OF
DAVID J. WEINSOFF
138 Ridgeway Avenue
Fairfax, California 94930
tel. 415-460-9760
david@weinsofflaw.com

Via Certified Mailing – Return Receipt

June 4, 2019

JUN 10 2019

John Kane, Winemaker/Managing Agent
Eduardo Guilisasti Gana, CEO
Fetzer Vineyards
12901 Old River Road
Hopland, CA 95449-9813

**Re: Notice of Violations and Intent to File Suit Under the Federal Water
Pollution Control Act (Clean Water Act)**

Dear Mr. Kane, Mr. Gana, and Managing Agent:

NOTICE OF ALLEGED VIOLATIONS

This Notice is provided on behalf of California River Watch (“River Watch”) in regard to violations of the Clean Water Act (“CWA” or “Act”), 33 U.S.C. § 1251 *et seq.*, that River Watch believes are occurring at the winery owned and/or operated by Fetzer Vineyards and Vina Concha y Toro S.A. (“Winery”) located at 12901 Old River Road in Hopland, California. Notice is being sent to you as the responsible owners, operators, and managers of the Winery and real property. This Notice addresses the violations of the CWA, including violation of the new terms of the General California Industrial Storm Water Permit, and the unlawful discharge of pollutants from the Winery directly into the Russian River, a navigable water of the United States impaired under CWA § 303(d) for sediment, temperature, pathogens throughout the watershed, with dissolved oxygen, mercury, and phosphorus in certain reaches.

CWA § 301(a), 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant into waters of the United States unless such discharge is in compliance with various enumerated sections of the Act. Among other things, Section 301(a) prohibits discharges not authorized by, or in violation of, the terms of an individual National Pollutant Discharge Elimination System (“NPDES”) permit or a general NPDES permit issued pursuant to CWA §402(p), 33 U.S.C. § 1342. CWA §402(p), 33 U.S.C. § 1342(p) establishes a framework for regulating storm water discharges under the NPDES program. States with approved NPDES permitting programs are authorized under this section to regulate storm water discharges through permits issued to dischargers and/or through the issuance of a single, statewide general permit applicable to all

storm water dischargers. Pursuant to CWA § 402, the Administrator of the U.S. Environmental Protection Agency (“EPA”) has authorized California’s State Water Resources Control Board (“SWRCB”) to issue NPDES permits including general NPDES permits in California.

The SWRCB elected to issue a statewide general permit for industrial dischargers and issued NPDES Permit No. CAS000001, SWRCB Order No. 92-12-DWQ (the “General Permit”) on or about November 19, 1991, modified it on or about September 17, 1992, reissued it on or about April 17, 1997, and amended it significantly on April 1, 2014 (effective July 1, 2015), pursuant to CWA § 402(p). In order to discharge storm water lawfully in California, industrial dischargers must comply with the terms of the General Permit or have obtained an individual NPDES permit and are in compliance with its terms.

CWA § 505(b) requires a citizen to give notice of the intent to file suit sixty (60) days prior to the initiation of a civil action under Section 505(a) of the Act. Notice must be given to the alleged violator, the EPA, and the state in which the violations occur. As required by the CWA, this Notice provides notice of the violations that have occurred and continue to occur at the Winery. Consequently, Fetzer Vineyards and Vina Concha y Toro S.A (the “Discharger”) is placed on formal notice by River Watch that after the expiration of sixty (60) days from the date of this Notice, River Watch will be entitled to bring suit in the United States District Court against the Discharger for continuing violations of an effluent standard or limitation, NPDES permit condition or requirement, or Federal or State Order issued under the CWA (in particular, but not limited to, CWA § 301(a), § 402(p), and § 505(a)(1), as well as the failure to comply with requirements set forth in the California Code of Federal Regulations and the North Coast Regional Water Quality Control Board (“RWQCB”) Water Quality Control Plan or “Basin Plan.”

The CWA requires that any notice regarding an alleged violation of an effluent standard or limitation or of an order with respect thereto shall include sufficient information to permit the recipient to identify the following:

1. The Specific Standard, Limitation, or Order Alleged to Have Been Violated.

To comply with this requirement, River Watch notices the Discharger of ongoing violations of the substantive and procedural requirements of CWA § 402(p) and violations of NPDES Permit No. CAS000001, SWRCB Order No. 92-12-DWQ as amended by Order No. 97-03-DWQ and Order No. 2014-0057-DWQ (the “General Permit”) relating to services and operations taking place at the Winery.

The Discharger, rather than seeking coverage under an individual NPDES permit, filed a Notice of Intent (“NOI”) agreeing to comply with the terms and conditions of the General Permit. The SWRCB approved the NOI on or about September 8, 1997 and the Discharger is assigned Waste Discharger Identification (“WDID”) number 1 23I013405. River Watch, on the basis of eye-witness reports and records publicly available, and/or records in the possession and control of the Discharger, contends that in the continuing winery operations taking place at the Winery, the Discharger has failed and is failing to comply with the strict terms and conditions of the General Permit – specifically the requirements governing sampling and analysis, the

foundation upon which the Discharger can prepare and implement effective Best Management Practices (“BMPs”) in its Storm Water Pollution Prevention Plan (“SWPPP” (a complete copy of which is not uploaded in its entirety on the SMARTS website)) for the Winery, ensuring the elimination of all non-authorized storm water discharges.

Compliance with these General Permit requirements is central to the effectiveness of the General Permit program. River Watch alleges the Discharger has failed and is failing to comply with the General Permit annual reporting requirements for reporting years 2015-2016, 2016-2017, 2017-2018, and the first half of the 2018-2019 reporting year. The General Permit in effect beginning July 1, 2015 (Order No. 2014-0057-DWQ) revised significantly the reporting requirements for industrial facilities such as the Winery. Under the new General Permit, the Discharger is required to comply with all of the following:

- “Collect and analyze storm water samples from two (2) Qualifying Storm Events (“QSEs”) within the first half of each reporting year (July 1 to December 31), and two (2) QSEs within the second half of each reporting year (January 1 to June 30)” (*see* General Permit Section XI.B.2 and SWPPP Section 5.6.1 (“*Sampling Schedule*”).

River Watch, following review of the SWRCB’s SMARTs reporting database, contends the Discharger failed to comply with this requirement by sampling and analyzing for one of the required two (2) samples during the first half of the 2017-2018 Annual Reporting Year, and none of the required two (2) samples during the first half of the 2018-2019 Annual Reporting Year.¹

- “Analyze all collected samples for the following parameters: “(a) Total suspended solids (TSS) and oil and grease (O&G); (b) pH ...; (c) Additional parameters identified by the Discharger on a facility-specific basis that serve as indicators of the presence of all industrial pollutants identified in the pollutant source assessment ...” (*see* General Permit Section XI.B.6.a.-c.).

River Watch, following review of the “Analytical Reports” of the storm water samples reporter by the Discharger, alleges the Discharger failed to reveal monitoring and analysis of the full range of pollutants required by the General Permit. The Reports provide sampling for Oil and Grease, Total Suspended Solids, and pH (with violations identified in sample results of pH confirmed in the “Level 1 ERA Report” prepared by the Discharger dated December 27, 2017), but fail to provide sampling results from the “List of Identified Pollutants within the Impaired Watershed” that should be identified by the Discharger in its Annual Reports; zinc and copper resulting from transportation activities at the Winery; and critically the “additional parameters identified by the Discharger on a facility-specific basis that serve as indicators of the presence of industrial pollutant identified in the pollutant source assessment ...” (General Permit Section XI.B.6.c). In its SWPPP “BMP Summary Table,” provided on SMARTS under #1435057, the Discharger identifies a broad range of titled “Industrial Pollutant[s]” that should be identified as “potential pollutant sources” and monitored/sampled (*see* Exhibit A). River Watch alleges the

¹ In addition, the Discharger’s required Annual Report for Annual Reporting Year 2015-2016 is not available on the SMARTS website, in violation of General Permit Section XVI and as required by the Winery’s June, 2015 SWPPP (subsection titled “*Annual Report*”).

Discharger's failure to provide full sampling results for all of these parameters is a violation of the General Permit.

2. The Activity Alleged to Constitute a Violation.

Full compliance with the mandates of the General Permit is not a mere statutory and regulatory exercise. The lands in and surrounding the Russian River Watershed produce a harvest of unparalleled bounty drawing acclaim worldwide. Failing to care for this critical environment as alleged in this Notice is a violation not only of law, but an abrogation of the trust we demand of Mendocino County landowners. The Winery appears to support this, as it proclaims on its website – “What’s good for the Earth is good for the grape, and what’s good for the grape is good for the wine. It was true 50 years ago, and it will still be true 50 years from now. Everything we do – how we nurture our land, how we make our wine – reflects a longstanding commitment to minimizing our impact on the environment. Because how we care for the Earth matters.” (See <https://www.fetzer.com/>).

The Winery is classified on the NOI as SIC Code 2084 (“Wines, Brandy, and Brandy Spirits”), triggering monitoring and sampling for the full range of mandated and “additional parameters” listed above. Industrial operations at the Winery are conducted both indoors and outdoors where they are subject to rain events. Because there is no public record of an SWRCB or RWQCB exemption from the collecting and analyzing of the full range of pollutants required by the General Permit, there is no accurate measure by which to determine whether required BMPs under General Permit Section X are both implemented at the Winery and effective to ensure no unlawful discharge(s) of the pollutants identified above from the Winery discharge to the Russian River. This concern for effective storm water pollution control extends to the following:

- It appears that one or more “wastewater treatment ponds” that discharge “[t]o creek or process waste” may be located within the Winery boundary identified in the SWPPP “Site Map” provided in Exhibit B (See also Table 5.2 of SWPPP Amendment dated December 2017 (“Stormwater Discharge Locations”) which identifies Outfall Site #2 and states “pipe outlet at ephemeral drainage south of winery building”). If this is so, River Watch would be concerned that BMPs in the SWPPP are not detailed sufficiently to determine whether these ponds are lined or unlined, and whether they are sufficient to hold all regulated storm water prior to evaporation, reuse, or recycling at the Winery.
- “Erosion and Sediment Controls” are also not detailed sufficiently in the SWPPP to determine whether the roadways used for the trucking of supplies to, from, and within the Winery are constructed and maintained to properly control storm water discharges from the Winery.

Note that in addition to the pollution controls set forth in the General Permit, the RWQCB has established water quality standards applicable to facilities such as the Winery. The RWQCB’s Basin Plan includes both a narrative toxicity standard and a narrative oil and grease standard, providing that “[w]aters shall not contain suspended material in concentrations that cause nuisance or adversely affect beneficial uses.” The Basin Plan establishes limits on metals, solvents, pesticides, and other hydrocarbons.

3. The Person or Persons Responsible for the Alleged Violation.

The entity responsible for the alleged violations is Fetzer Vineyards and Vina Concha y Tora S.A., referred to in this Notice as the Discharger.

4. The Location of the Alleged Violation.

The location of the various violations is the permanent address of the Winery at 12901 Old River Road in Hopland, California, including the waters of the Russian River – a water of the United States.

5. The Date or Dates of Violation or a Reasonable Range of Dates During Which the Alleged Activity Occurred.

The range of dates covered by this Notice is from July 1, 2015 to June 1, 2019. River Watch will from time to time update this Notice to include all violations which occur after the range of dates covered by this Notice. Some of the violations are continuous in nature, therefore each day constitutes a violation.

6. The Full Name, Address, and Telephone Number of the Person Giving Notice.

The entity giving this Notice is California River Watch, an Internal Revenue Code § 501(c)(3) nonprofit, public benefit corporation organized under the laws of the State of California, with headquarters located in Sebastopol, California. River Watch's mailing address is 290 South Main Street, #817, Sebastopol, California 95472. River Watch is dedicated to protecting, enhancing and helping to restore surface water and groundwaters of California including coastal waters, rivers, creeks, streams, wetlands, vernal pools, aquifers and associated environs, biota, flora and fauna, and to educating the public concerning environmental issues associated with these environs.

River Watch may be contacted via email: US@ncriverwatch.org, or through its attorneys. River Watch has retained legal counsel with respect to the issues set forth in this Notice. All communications should be directed to:

David Weinsoff, Esq.
Law Office of David Weinsoff
138 Ridgeway Avenue
Fairfax, CA 94930
Tel. 415-460-9760
Email: david@weinsofflaw.com .

REMEDIAL MEASURES REQUESTED

River Watch believes that implementation of the following remedial measures is necessary in order to bring the Discharger into compliance with the CWA and reduce the biological impacts from its non-compliance upon public health and the environment surrounding the Winery:

1. Compliance with the sampling and monitoring requirements for the full range of pollutants including, but not limited to:
 - a. pH, total suspended solids, and oil & grease (the standard pollutants); pollutants on the "List of Identified Pollutants within the Impaired Watershed;" and copper and zinc; and
 - b. all "Potential Pollutant Sources" identified in the Discharger's current SWPPP for the Winery.
2. A more thorough annual assessment of the need for analytical monitoring of the pollutants as required in the Annual Report "Question Information" #8.
3. Preparation and submittal to the RWQCB of a "Reasonable Potential Analysis" for the Winery and its industrial operations.
4. Implementation of updates to the Discharger's SWPPP that include, but are not limited to, additional BMPs necessary to address any violations of the General Permit identified by required sampling and analysis.

CONCLUSION

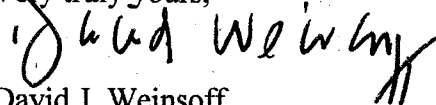
The violations set forth in this Notice effect the health and enjoyment of members of River Watch who reside and recreate in the affected community and may use the affected watershed for recreation, sports, fishing, swimming, hiking, photography, nature walks and/or the like. Their health, use, and enjoyment of this natural resource is specifically impaired by the Discharger's alleged violations of the CWA as set forth in this Notice.

The General Permit, in the very first "Standard Condition," states that "Dischargers shall comply with all standard conditions in this General Permit. Permit noncompliance constitutes a violation of the Clean Water Act and the [California] Water Code and is grounds for enforcement action and/or removal from General Permit coverage" (*see* General Permit Section XXI.A). The gravity of ensuring that the Annual Reports submitted to the State of California are complete and accurate is highlighted by the General Permit requirement that the person signing and certifying the document certifies that "to the best of my knowledge and belief, the information submitted is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations" (*see* General Permit Section XXI.L).

CWA §§ 505(a)(1) and 505(f) provide for citizen enforcement actions against any "person," including individuals, corporations, or partnerships, for violations of NPDES permit requirements and for unpermitted discharges of pollutants. 33 U.S.C. §§ 1365(a)(1) and (f), §1362(5). An action for injunctive relief under the CWA is authorized by 33 U.S.C. §1365(a). Violators of the Act are also subject to an assessment of civil penalties of up to \$54,833.00 per day/per violation pursuant to Sections 309(d) and 505 of the Act, 33 U.S.C. §§ 1319(d), 1365. *See also* 40 C.F.R. §§ 19.1-19.4. River Watch believes this Notice sufficiently states grounds for filing suit in federal court under the "citizen suit" provisions of CWA to obtain the relief provided for under the law.

The CWA specifically provides a **60-day** "notice period" to promote resolution of disputes. River Watch encourages the Discharger to contact counsel for River Watch within **20 days** after receipt of this Notice to: (1) initiate a discussion regarding the allegations detailed in this Notice, and (2) set a date for a site visit to the Winery. In the absence of productive discussions to resolve this dispute, or receipt of additional information demonstrating the Discharger is in compliance with the strict terms and conditions of the General Permit, River Watch will have cause to file a citizen's suit under CWA § 505(a) when the 60-day notice period ends.

Very truly yours,


David J. Weinsoff

DW:lm

Service List

Andrew Wheeler, Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N. W.
Washington, D.C. 20460

Michael Stoker, Regional Administrator
U.S. Environmental Protection Agency
Pacific Southwest, Region 9
75 Hawthorne Street
San Francisco, CA 94105

Eileen Sobeck, Executive Director
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-0100

Cindy Devries, Registered Agent
Fetzer Vineyards
12901 Old River Road
Hopland, CA 95449-9813

Corporation Service Company, Registered Agent
Fetzer Vineyards, Inc.
40 Technology Parkway South # 300
Norcross, GA 30092

VCT USA, Inc.
P.O. Box 611
Hopland, CA 95449-0611

EXHIBIT A

BMP Summary Table

	Area of Industrial Activity	Pollutant Source	Industrial Pollutant	BMP Implemented
1	Any outside paved area	Rupture of a vehicle fuel tank	-Diesel -Gasoline	-Routinely scheduled vehicle PM -Strategic placement of spill kits
2	Chemical Storage Room	Rupture of chemical tank	-Citric Acid -Chlor231 -Glue -ZEP A-One -Anti-Freeze/Glycol -Food Machinery Oil -Motor Oil -Hydraulic Oil -Sulfurous Acid -Tartaric Acid -Diammonium Phosphate Diatomaceous Earth -Potassium Hydroxide -Hydrogen Peroxide -Peracetic Acid -Polyclar V -Potassium Carbonate -Bentonite -Ascorbic Acid -Malic Acid	-Only stored inside buildings -Routing of drains to process waste-water ponds -Right-size purchases -Strategic placement of spill kits
3	Cellars/Winery/Barrel Rooms	Rupture of wine line, tank, or barrel	-Wine	- Routing of drains to process waste-water ponds -Magnetic mats to cover drains
4	North Side of Cellars/Winery	Failure of wastewater sump pump	-Untreated production wastewater	-Sump alarm
5	Tanker Pad	Leak from a wine tanker truck	-Wine	-Strategic placement of spill kits -Routing of drains to process waste-water ponds
6	Wastewater Ponds	Failure of pond	-Treated and non-treated production wastewater	-Route inspection and maintenance -Dredging
7	Wastewater Ponds	Unusually heavy rains causing overflow	-Treated and non-treated production wastewater	-Route inspection and maintenance -Dredging

				-Treated water discharge in anticipation with a storm event
8	Cellars/Winery/White Barrel Room	Break in line to sump	-Untreated production wastewater	-Halt activity at that location until repaired

EXHIBIT B

FETZER VINEYARDS SWPPP SITE MAP # 1

LEGEND

Unnamed Creek	> . >
Storm drain	→ → →
Storm drain	■
To Wastewater treatment ponds	→ → →
To creek or process waste	⊙
Pump transfer to PW or drain to Outfall #1	●
To process waste or sheet flow	○
SWPPP Test Point	⊕
Parking Lot	(P)
Paved surfaces	—
Industrial Area	—

